



COMMISSIONERS

Susan E. Wefald
President
Bruce Hagen
Leo M. Reinbold

State Capitol - 600 E. Boulevard
Bismarck, North Dakota 58505-0480
e-mail: mmsmail.sab@oracle.psc.state.nd
TDD 800-366-6888
Fax 701-328-2410
Phone 701-328-2400

Executive Secretary
Jon H. Mielke

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July 2, 1997 JUL 08 1997

FCC MAIL ROOM


William F Caton Secretary
Federal Communications Commission
1919 M St N W
Washington D C 20554

Dear Mr. Caton:

Enclosed is an original and five copies of the North Dakota Public Service Commission's Petition for Waiver on universal service.

If you have any questions, please do not hesitate to call me.

Sincerely,


Illona A. Jeffcoat-Sacco, Director
Public Utilities Division

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Enclosures

14. *Chrysomelids*

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**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554**

In the Matter of

**Federal-State Joint Board on
Universal Service**

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CC Docket No. 96-45

PETITION FOR WAIVER

The Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (Act) provides discount rates on designated telecommunications services for eligible schools and libraries. Specifically, Section 254(h)(1)(B) provides that the discount shall be an amount that the Federal Communications Commission (FCC), with respect to interstate services, and the states, with respect to intrastate services, determine is appropriate and necessary to ensure affordable access to and use of such services by such entities.

On May 8, 1997 the FCC issued its Report and Order, CC Docket 96-45, Order No. 97-157 (Order) implementing key portions of section 254 of the Act which addresses universal service. The Order identifies interstate and intrastate services to be discounted, sets forth the discount levels for interstate services, and states that the funding will begin January 1, 1998. Schools and libraries must file applications to be eligible for discounts. In addition, 47 C.F.R. § 54.505(e)(1), states that funding of discounts for those interstate and intrastate services for schools and libraries is contingent upon the establishment of intrastate discounts no less than the discounts applicable for interstate services. 47 C.F.R. § 54.505(e)(2) provides that a state may secure a temporary waiver of the intrastate discount requirement based on unusually compelling conditions.

The FCC has authority to waive its rules if there is good cause shown, 47 C.F.R. § 1.3 (1996). The FCC may exercise its authority to waive a rule where particular facts would make strict compliance inconsistent with the public interest. *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969). In *WAIT Radio* the court held that a waiver is appropriate only if special circumstances warrant a deviation from the general rule and such deviation will serve the public interest.

The position taken by some telecommunications companies in North Dakota is that the North Dakota Public Service Commission (NDPSC) lacks jurisdiction under state law to establish discounts, and that discounts may be "established" by telecommunications companies' management without governmental order or approval. They say that when discounts are established by management action, they can be

reported to interested government agencies, including the NDPSC and the administrator of the federal universal support system.

The North Dakota Public Service Commission (NDPSC) is prohibited under North Dakota law (N.D.C.C. § 49-02-01.1) from making "any order affecting rates, contracts, services rendered, adequacy, or sufficiency of facilities, or the rules or regulations of any public utility . . . that is not operated for profit, that is operated as a nonprofit, cooperative, or mutual telecommunications company or is a telecommunications company having fewer than eight thousand local exchange subscribers." In addition, N.D.C.C. § 49-21-01.2 provides that "[t]elecommunications companies and services are not subject to rate or rate of return regulation." The law does provide that a company may elect to be subject to rate and rate of return regulation.


Finally, North Dakota Public Service Commission jurisdiction over deregulated providers must be implemented through rules.

The NDPSC proposes to initiate a rulemaking proceeding to establish intrastate discounts. The discounts established through rulemaking will apply where it is determined that the NDPSC has jurisdiction to determine discounts. In the event it is determined that the NDPSC lacks jurisdiction to determine discounts, the discount will have to be established by the state legislature. In order to protect the interests of schools and libraries in the State of North Dakota, the NDPSC requests a waiver of the FCC's 47 C.F.R. § 54.505(e)(1) discount requirements to allow time to complete the rulemaking process to establish discounts, and where NDPSC jurisdiction may be lacking, to allow time for the state legislature to establish such discounts. The state legislature does not meet again in general session until the year 1999.

The special circumstances that exist under North Dakota law warrant a deviation from the general rule. A temporary waiver until August 1, 1999 (the standard effective date of new state legislation) serves the public interest by assuring federal universal service support for eligible schools and libraries in North Dakota.

WHEREFORE, the North Dakota Public Service Commission requests a waiver of the section 54.505(e)(1) requirement under 47 C.F.R. § 1.3 (1996) and under section 54.505(e)(2) until August 1, 1999 to allow time to complete the rulemaking and legislative processes required to establish intrastate discounts.

Respectfully submitted this 2nd day of July, 1997.



Susan E. Wefald
Commissioner



Leo M. Reinbold
President



Bruce Hagen
Commissioner